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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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PUBLIC UTILITIES  
COMMISSION

----- In The Matter Of -----

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate the  
Implementation of Feed-In Tariffs

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DOCKET NO. 2008-0273

**COMMENTS OF THE HAWAIIAN ELECTRIC COMPANIES**

**AND**

**CERTIFICATE OF SERVICE**

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**COMMENTS OF THE HAWAIIAN ELECTRIC COMPANIES**

Pursuant to the Commission's September 25, 2009 Decision and Order ("Decision and Order"), and October 29, 2009 Order Setting Schedule in the above-subject proceeding, Hawaiian Electric Company, Inc. ("Hawaiian Electric"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO")(collectively the "Hawaiian Electric Companies" or "Companies"), respectfully submit the following comments on the proposed tariffs that have been filed in this proceeding.

I. **ZEL/CEM Proposed Tier 3 Tariff and Agreement**

The Commission should disregard the proposed Tier 3 Tariff and Agreement submitted by Zero Emissions Leasing LLC ("ZEL") and Clean Energy Maui LLC ("CEM") because they are contrary to the general principles set forth in the Decision and Order, unsupported by the record in this proceeding and generally inconsistent with the implementation of a reliable and cost effective Tier 3 FIT program in the Hawaiian

Electric Companies' service territories. The shortcomings in the ZEL/CEM proposed Tariff and Agreement include but are not limited to the following:

A. Schedule FIT – Page 2 - Definitions

The proposed definition of "Onshore Wind Generating Facility" (item (10)) is not consistent with the Commission's findings in this proceeding. The Commission's Decision and Order determined that "onshore wind" would be an eligible FIT technology. (Decision and Order at 31-32). The term "onshore" is indicative of an intention to have these eligible renewable generating facilities be land-based and not located off-shore in water depths of up to 20 meters. Accordingly, this definition should be disregarded by the Commission in favor of a definition consistent with the Commission's "onshore" determination.

B. Schedule FIT – Pages 2-3 – Interconnection

With regard to the issue of interconnection, pursuant to the Commission's Decision and Order a FIT renewable energy generator should not be interconnected to the Company's electric system until the generator has appropriately met the terms and conditions of the Commission approved application process, queuing, interconnection and reliability standards, including but not limited to the Companies' respective Rules 14H and 19. Moreover, any approved FIT interconnection process must be consistent with the Commission's directive that the Companies "must not interconnect projects that will substantially compromise reliability or result in an unreasonable cost to ratepayers or would lead to significant curtailment of new or existing renewable energy generators." (Decision and Order at 56)

C. Schedule FIT – Page 4 – Interconnection Features and Standards

Consistent with the Commission's Decision and Order, determinations regarding voltage regulation and frequency regulation should be made based upon any *Interconnection Requirements Study conducted for a particular project. (Id.)*

D. Schedule FIT- Page 4 – Allocation of Interconnection Costs

ZEL/CEM does not provide any justification for the proposed allocation of interconnection costs set forth in the ZEL/CEM Tariff. The allocation of interconnection costs should be consistent with the interconnection standards and processes to be determined in conjunction with the Independent Observer and parties as indicated in the Commission's Decision and Order. (See, Decision and Order at 92-94) The allocation of interconnection costs may also be a topic to be considered by the Companies' proposed Reliability Standards Working Group.

E. Schedule FIT – Page 5 – Schedule FIT Agreement

The ZEL/CEM proposed Tariff, without explanation of any kind, plainly disregards and contradicts the Commission's Decision and Order by providing compensation for curtailment of a renewable energy generating facility. At page 71 of the Decision and Order the Commission expressly declined to establish a compensation mechanism for curtailment of FIT projects due in part to the "uncertainties involved in estimating the level and effect of curtailments...." Accordingly, these contrary provisions should be disregarded by the Commission. The Commission indicated that it may revisit the "curtailment issue" during any subsequent periodic reexamination of the FIT process.

F. Schedule FIT – Page 5-6 – Rights and Obligations Following Term

The ZEL/CEM Tariff contains a provision regarding the rights and obligations of the parties following the term of the Schedule FIT Agreement that is inconsistent with the Commission's Decision and Order. The Commission was particularly clear on the rights and obligations following the contract term and stated as follows:

*As a term of FIT participation, at the conclusion of the FIT term, projects must offer to sell their electricity to the utility on an annual basis at a revised FIT rate appropriate for the specific project. The utility will have no obligation to purchase after the FIT term, and must exercise its option to purchase by notifying the project owner of whether it will exercise this option no less than six months prior to the conclusion of the FIT term. This period provides project owners with sufficient opportunity to negotiate new rates with the utility or find another buyer, if possible. If the utility does not exercise this right, project owners have the right to sell electricity from their projects at any rate that they may agree to, or to sell electricity at the PURPA avoided-cost rate to the utility, if they are eligible to do so.*

(Decision and Order at 90-91)(Emphasis supplied)

The ZEL/CEM proposed Tariff provides for compensation to the Renewable Energy Generating Facility at the "feed-in tariff rate of compensation ... in effect upon the conclusion of such term." The proposed provision is inconsistent with the Commission's general principle and should be disregarded in favor of the specific direction provided by the Commission.

G. Schedule FIT - Page 6 – Metering Instrumentation

The Section on "Metering Instrumentation" provides for the generator to install certain instrumentation apparently necessary to measure flows associated with calculating curtailment compensation. For the reasons discussed above in the comment on this issue at Page 5 of the ZEL/CEM Tariff, this provision should be disregarded by the Commission as contrary to the general principles set forth in the Decision and Order.

H. Schedule FIT – Pages 6-7 – Purchase of Renewable Energy

With regard to the table under the heading “Purchase of Renewable Energy,” the ZEL/CEM proposed rates reflect preliminary numbers subsequently updated as a part of the collaborative discussions among the parties. No support or information of any kind is provided to justify the rates that are proposed. In addition, no explanation is provided regarding the open-ended process, described as “to be determined,” to be undertaken to develop the rates. Finally, for the reasons discussed herein and set forth in the Decision and Order at 71, the Commission declined to adopt compensation for curtailment of FIT generating facilities at this time. Accordingly, the Commission should disregard the entirety of the Table at pages 6-7 of the ZEL/CEM Tariff as unsupported by the record and without merit.

I. Schedule FIT – Page 8 – Net Energy Metering

With regard to “Net Energy Metering” this section should be modified to appropriately reflect the Commission’s directive that an existing Net Energy Metering customer has an option of either retaining its existing NEM agreement or entering into a Schedule FIT Agreement with the Company. (See, Decision and Order at 21)

J. Schedule FIT – Pages 8-9 – Aggregate System Caps

The aggregate system caps proposed by ZEL/CEM are plainly at odds with the Commission’s general principles and directives set forth in the Decision and Order and should therefore be disregarded by the Commission (Decision and Order at 55-57).

K. Standard Schedule FIT Agreement - General

The ZEL/CEM proposed Standard Schedule FIT Agreement is apparently founded in part upon the Schedule FIT Tier 1 and Tier 2 Agreement submitted by the

Hawaiian Electric Companies on January 7, 2010. As previously noted by the Companies, the Schedule FIT Agreement for Tiers 1 and 2 attempted to simplify the applicable terms and conditions to the extent possible in consideration of the proposed project sizes.<sup>1</sup>

As the Commission has recognized, Tier 3 is “for projects that are in many cases not behind-the-meter and are designed to export large amounts of electricity to the grid.” (Decision and Order at 46) The Commission also recognized that “the largest size tier, Tier 3, will have more complex issues to resolve....” (Id.) Accordingly, the Companies’ Tier 3 Schedule FIT Agreement incorporates terms and conditions appropriate for projects of this size and helps ensure both that the utility has the appropriate tools necessary to manage these larger scale resources, which in the aggregate could account for a significant portion of the non-utility generation on the utilities’ grids, and that all parties to the Tier 3 Schedule FIT Agreement are able to meet their obligations under the Agreement for the entire term of the Agreement pursuant to the Commission’s Decision and Order. The ZEL/CEM Tier 1 and 2-based Agreement is simply inappropriate for the management of multiple Tier 3 sized projects over a twenty year term and should be disregarded by the Commission.

L. Schedule FIT Agreement – Page 1

At Paragraph 3 and Section 2(a) of this page, ZEL/CEM provide for compensation for curtailment. As set forth at page 71 of the Decision and Order, this is contrary to the Commission’s determinations on this issue, and these paragraphs and provisions should be disregarded by the Commission. Similarly, Section 2(b) of the

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<sup>1</sup> See, Companies’ April 29, 2010 correspondence transmitting the Companies’ Schedule FIT Tier 3 Tariffs and Agreement.

proposed Agreement discusses the methodology to calculate curtailment compensation. This section should also be disregarded since the Commission has not authorized curtailment compensation in this proceeding.

#### Schedule FIT Agreement – Pages 2 and 3

The Companies' comments above regarding such issues as Interconnection (Section 4 of the proposed Agreement); Metering Instrumentation (Section 6 of the proposed Agreement), and Term (Section 7 of the proposed Agreement) are equally applicable to the parallel sections contained in the Agreement and the sections of the proposed Agreement should be disregarded for the same reasons. The Hawaiian Electric Companies respectfully reserve their individual and collective rights to comment further upon the ZEL/CEM proposed Tier 3 Tariff and Agreement, any modifications thereto, and any other tariff or proposal that is late submitted, to appropriately respond to the contentions therein, or as the Commission may otherwise allow.

## II. Clarification and Limited Modification of Schedule FIT Tariff and Agreement

The following limited modifications to the Hawaiian Electric Companies' Schedule FIT Tariff and Agreement are made for the purposes of clarifying the record and the operability of the Schedule FIT Tariff and Agreement provisions.

### A. Correction to Pricing Analysis

The Companies would like to correct two inadvertent errors in the pricing analysis. In the submittal to the Commission by the Companies on April 29, 2010, one In-line Hydro scenario calculation inadvertently utilized a 0.70% of capital expenditure per year insurance cost input. The insurance rate percentage should be 0.60% for all five scenarios modeled. This modification causes a minor change in the overall In-line Hydro



FIT rate. The new proposed rate is \$110/MWh as opposed to the \$111/MWh set forth in the April 29, 2010 Tariffs.

The second error concerns an input line in the Concentrated Solar Power (CSP) pricing analysis. Instead of modeling \$530/kW for interconnection costs for the 1MW systems in the last three scenarios, an input of \$560/kW was inadvertently included. Changing the interconnection price from \$560/kW to \$530/kW, as it should have been initially modeled, results in a minor change in the overall CSP FIT rate. The new proposed rate (assuming a 35% tax credit) is \$315/MWh (as opposed to the \$316/MWh figure set forth in the April 29, 2010 Tariffs). The new proposed rate is \$335/MWh if the project takes the 24.5% refundable tax credit (as opposed to the \$336/MWh figure set forth in the April 29, 2010 Tariffs). The updated models in support of the revised pricing are attached as a part of these comments.

B. Correction to Schedule FIT Tier 3 Power Purchase Agreement

Upon review of the Schedule FIT Tier 3 Power Purchase Agreement filed with the Commission on April 29, 2010, it was determined that there are two inadvertent errors in Section 17.2 (A) regarding indemnification of the Seller which must be corrected. The corrections to Section 17.2 (A) are noted below with the erroneous terms stricken and the corrected terms underlined.

Personal Injury, Death or Property Damage. Company shall indemnify, defend, and hold harmless Seller, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, servants and agents, including but not limited to contractors and their employees (collectively referred to as an "Indemnified Seller Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party or to which any Indemnified Seller Party becomes subject, resulting from, arising out of or relating to any Claim by a third party not controlled by or under common ownership and/or control with ~~Company Seller~~ (whether or not well founded, meritorious or unmeritorious) relating to any actual or alleged personal injury or death or damage

to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of ~~Seller Company~~ or its agents or subcontractors, except to the extent that any of the foregoing is attributable to the gross negligence or willful misconduct of an Indemnified Seller Party.

### III. Acknowledgement of Tax Information Release No. 2010-02

As a part of the general principles for the implementation of Feed-In Tariffs in the Companies' service territories the Commission determined that:

*FIT rates should support a typical or average project that is reasonably cost-effective, and that included in the calculation of FIT rates should be project and generation cost information, energy production, and the target internal rate of return.*

Decision and Order at 62 (footnotes omitted)

With respect to State and federal taxes and other incentives, the Commission stated that:

*... adjusting the project development costs for such tax credits, tax policies, rebates or incentives for renewables is consistent with the inclusion of the taxes incurred in the project development cost used in the determination of the FiT rates.*

Decision and Order at 63 (internal quotations and footnote omitted)


Consistent with these principles and guidance, the Hawaiian Electric Companies worked with the parties and the Companies' consultants to develop proposed prices for Tiers 1, 2 and 3, that "should support a typical or average project that is reasonably cost effective" and which appropriately adjust the project development costs for "tax credits, tax policies, rebates or incentives" that were known or readily ascertainable at the time the proposed prices were developed.<sup>2</sup>

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<sup>2</sup> Proposed prices for Tiers 1 and 2 were developed and filed with the Commission on January 7, 2010. Proposed prices for Tier 3 were developed and filed with the Commission on April 29, 2010.

On May 3, 2010, the Hawaii Department of Taxation ("HDOT") issued Tax Information Release ("TIR") No. 2010-02, the purpose of which is to provide additional guidance on the HDOT's interpretation of the term "system" for purposes of the Renewable Energy Technologies Income Tax Credit ("RETITC" or "Credit") set forth at Section 235-12.5, Hawaii Revised Statutes. The Hawaiian Electric Companies are currently in the process of evaluating the potential implications associated with the HDOT's additional guidance and therefore respectfully defer stating a position on this issue until that evaluation process can be completed.

DATED: Honolulu, Hawaii, May 20, 2010.

By   
Kevin M. Katsura  
Attorney for  
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Maui Electric Company, Limited

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing COMMENTS  
ON THE HAWAIIAN ELECTRIC COMPANIES, together with this Certificate of  
Service, by making personal delivery or by causing a copy hereof to be mailed, postage  
prepaid, and/or by electronic service as follows:

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Dated: Honolulu, Hawaii, May 20, 2010.

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